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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

RYAN SMITH, individually and on behalf of  
similarly situated employees,

Plaintiff,

v.

SUPERIOR FARMS,

Defendant.

No. 2:20-cv-1778 KJM DB

**STIPULATED PROTECTIVE  
ORDER**

This Stipulated Protective Order (“Protective Order”) is entered into by and between Plaintiff Ryan Smith and Defendant Ellensburg Lamb Co., Inc., d.b.a. Superior Farms (erroneously sued and served as “Superior Farms”), by and through their counsel of record, in order to facilitate the exchange of information and documents in this action which may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights.

**STIPULATION AND PROTECTIVE ORDER**

WHEREAS, the Parties anticipate that, given the nature of the claims in this action, they will be asked to produce documents, provide testimony and/or otherwise disclose confidential, third party private information, private personnel information, trade secret, proprietary business, and/or financial information, and/or other information that requires protection as confidential (hereinafter defined as “Confidential Information”).

WHEREAS, the Parties to this Action specifically expect that Defendant will be asked to produce personnel, time, and payroll records that implicate the constitutionally-protected privacy rights of its employees, as well as internal business records relating to Defendant’s employment policies and practices and business operations that contain highly proprietary and sensitive business information, the disclosure of which poses a substantial risk of harm to the Defendant’s proprietary and financial interests, including but not limited to (i) proprietary information related to Defendant’s operations, (ii) sensitive data regarding non-party employees of Defendant and other third parties; and (iii) other proprietary technical or commercially sensitive information that is not otherwise available to the public, including, but not limited to, information implicating commercial or trade secret interests of Defendant;

WHEREAS, the disclosure of any such Confidential Information within this Action is made solely for purposes of this Action and shall not be used for any other purpose;

WHEREAS, the Parties to this Action seek this Protective Order to establish procedures that will protect all Confidential Information while expediting the discovery process, limiting the occasion for discovery disputes regarding confidentiality and facilitating the disposition by the Court of any disputes that may arise in connection with discovery.

IT IS HEREBY STIPULATED, by and between the Parties, through their respective attorneys of record, as follows:

This Protective Order shall apply to all documents, materials, and information, including without limitation, documents produced, answers to interrogatories, responses to requests for admission, deposition testimony, and other information disclosed pursuant to the disclosure and discovery duties created by the Federal Rules of Civil Procedure.

**A. DEFINITIONS**

The following definitions shall apply to this Protective Order:

1. The “Action” shall mean and refer to the above-captioned matter and to all actions now or later consolidated with the Action, and any appeal from the Action and from any other action consolidated at any time under the above-captioned matter, through final judgment.

2. “Document” refers to all things that come within the definition of a “writing,” “recording,” or “photograph” contained in Rule 1001 of the Federal Rules of Evidence; including, without limitation, documents of any kind, however reproduced and however transcribed or translated; electronic storage devices, electronic recordings of any kind, including computer program files, data files, source code, CD-ROM, or electronic mail; photographs or other visual or audio visual recording of any kind; including still or motion pictures, microfilm, microfiche, videotapes, or laser discs; and sound recording of any kind, including voicemail, cassette, microcassettes, or compact discs. Every original draft, iteration or non-identical copy is a separate Document as that term is used herein.

3. “Confidential” shall mean information designated “Confidential” pursuant to this Protective Order. Information designated “Confidential” is that which concerns or relates to private third party information, and/ or proprietary business, commercial and/or trade secret interests of a Party as determined in good faith by the attorneys representing the Designating Party. Confidential Documents, material, and/or information shall be used solely for purposes of litigation. Confidential Information shall not be used by the non-Designating Party for any business or other purpose, unless agreed to in writing by all Parties to this Action or as authorized by further order of the Court.

4. “Confidential Document” shall mean any Document that any Producing Party (as defined below) designates as “Confidential” in the manner set forth in this Protective Order.

5. “Confidential Information” shall mean any information not made available to the general public that concerns or relates to private, personal, proprietary business, trade secret, and/or financial information and that may be subject to a protective order under applicable law.

6. “Designating Party” shall mean the party in this Action, or any third parties, designating a Document as “Confidential.”

1           7. “Producing Party” shall mean the Party producing Documents or providing testimony  
2 or other written discovery responses in this Action, whether informally or pursuant to the Federal  
3 Rules of Civil Procedure.

4           8. “Receiving Party” as used herein shall mean the Party that receives disclosure or  
5 discovery material in this Action.

6           9. “Legend” as used herein shall mean a stamp or similar insignia stating “Confidential,”  
7 or other appropriate term or terms identifying the level of confidentiality of the Document.

8           10. “Court” shall refer to the United States District Court for the Eastern District of  
9 California, and include any judge to which this Action may be assigned as well as court staff  
10 participating in such proceedings.

11           11. When reference is made to any Document, the singular shall include the plural, and  
12 the plural shall include the singular.

13 **B. TERMS OF THE PROTECTIVE ORDER**

14 **1. Designation of Documents.**

15           a. Any Producing Party may designate any Document as “Confidential” that the  
16 party reasonably, and in good faith, believes contains Confidential Information.

17           b. The Producing Party may designate a Document as “Confidential” by affixing  
18 the appropriate Legend to all copies of the Document (or CD or disk produced) at the time of  
19 production. The Producing Party must make document designations at the time of production or  
20 within a reasonable time thereafter if such designations are inadvertently omitted.

21           c. Alternatively, if it is not feasible to mark or designate a Document as described  
22 above in Section B(1)(b), the Producing Party may send a cover letter with the Document noting  
23 which portions of the Document are “Confidential.” This shall have the same force and effect as  
24 affixing the appropriate Legend to all copies of the Document.

25           d. A party may designate as “Confidential,” a Document produced by someone  
26 else which contains or refers to Confidential Information by informing, in writing, all Parties of the  
27 Bates number of such Document within seven (7) days of that Party’s receipt of the Document or  
28 within seven (7) days of the entry of this Protective Order, whichever is later.

1 e. Any Party may designate a deposition or hearing transcript (or any portion  
2 thereof or exhibit thereto) which reveals Confidential Information as “Confidential” by: (i) making  
3 such designation on the record during the deposition or hearing (in which case, the stenographer  
4 shall affix the appropriate Legend to the cover page and all designated pages of the transcript and  
5 all copies thereof); or (ii) informing counsel for all other Parties of such designation in writing  
6 within thirty (30) days of receipt of the transcript (in which case, any party in possession of an  
7 original or copy of the transcript shall affix the appropriate Legend to the cover page and all  
8 designated pages and exhibits).

9 **2. Provisions and Limitations of Use.**

10 a. All Confidential Documents in this Action shall be used solely for purposes  
11 of the prosecution, defense, or settlement of this Action; including, without limitation, discovery,  
12 motions, briefs, and preparation for the trial, and for no other purpose, except as otherwise stated  
13 within this Protective Order. This Protective Order does not affect the admissibility of Confidential  
14 Documents or Confidential Information in this Action.

15 b. Unless the Designating Party agrees otherwise, and subject to the provisions  
16 regarding “Confidential” information below, documents designated “Confidential” and any  
17 summaries, charts or notes made therefrom, and any facts or information contained therein or  
18 derived therefrom, shall not be disclosed to any person except:

- 19 i. The Court;
- 20 ii. Designated counsel of record and employees of designated counsel of  
21 record;
- 22 iii. The Parties and representatives of the Parties;
- 23 iv. Independent contractors, experts, consultants, or advisors who are  
24 employed or retained by, or on behalf of, any of the Parties or counsel for the Parties to this Action  
25 to assist in preparation of the trial;
- 26 v. Stenographic reporters who are involved in depositions or any  
27 proceedings in this Action;
- 28 vi. Copy service vendors;

vii. Deponents and witnesses; and

viii. Any other person as to whom the Parties agree in writing that disclosure is appropriate.

c. “Designated counsel” as set forth in Section B(2)(b)(ii) above are limited to counsel of record in this Action and in-house legal counsel for the entity Parties. Other than persons as expressly set forth in this Section, no other counsel shall be permitted access to Documents designated “Confidential” in this Action, unless otherwise agreed to by all of the Parties in writing.

3. **Duty to Inform of Order.** Unless the Designating Party agrees otherwise, Documents designated “Confidential” may be disclosed to persons referred to in Section B(2)(b), only after such persons have been provided with, and have reviewed, a copy of this Protective Order.

4. **Persons Required to Sign Order.** Unless the Designating Party agrees otherwise, Documents designated “Confidential” may be disclosed to persons referred to in categories (iv), (vii) and (viii) of Section B(2)(b), only after these persons have been provided with a copy of this Protective Order and have signed the certification attached hereto as Exhibit A. This certification shall be retained by the counsel to the Party disclosing the Confidential Documents or Confidential Information, and shall not be discoverable by any other Party unless a dispute arises concerning an alleged violation of this Protective Order.

5. **Copies.** Any person who obtains access to material designated as “Confidential” shall not make copies, abstracts, extracts, analyses, summaries, or other materials which contain, reflect or disclose Confidential Information, except for use in this litigation, and each such copy, abstract, extract, analysis, summary, or other material which contains, reflects or discloses Confidential Information, is to be treated in accordance with the provisions of this Protective Order. In the event that copies are made in accordance with the foregoing, all such copies shall constitute, and be treated as, “Confidential” Documents as provided in this Protective Order. Any person making, or causing to be made, copies of any “Confidential” Documents shall make certain that each copy bears the appropriate Legend, pursuant to the requirements of the Protective Order.

6. **Agreement to Maintain Confidentiality.** Unless and until otherwise ordered by the Court, or otherwise agreed by the Parties, all Documents designated as “Confidential” shall be

1 treated as such under this Protective Order.

2       **7. Objections to Designation.** Following the receipt of Documents (including  
3 deposition or hearing transcripts) marked “Confidential,” any Party to the Action may object to the  
4 designation of such Document and seek a modification of such designation by serving a written  
5 objection on the Designating Party. Thereafter, the Parties shall first make a good faith effort to  
6 resolve such dispute. If the Party objecting to the designation and the Designating Party are unable  
7 to resolve the objection to a “Confidential” designation, the Party objecting to the designation may  
8 at any time during the pendency of the Action move the Court for an order with respect to the  
9 disputed information. No part of this section will affect the Designating Party’s burden to show that  
10 the Document is correctly designated as “Confidential.” If a Party files a motion regarding a  
11 designation under this Section of the Protective Order, the designated information shall be lodged  
12 with the Court separately and not filed.

13       **8. Separate Protective Order or Modification of This Protective Order.** This  
14 Protective Order shall be without prejudice to the right of the Parties to the Action to present a  
15 motion to the Court for a separate protective order as to any particular Document or information  
16 including restrictions differing from those specified in this Protective Order. In addition, this  
17 Protective Order shall not be deemed to prejudice the Parties, in any way, in any future application  
18 for modification of this Protective Order.

19       **9. Additional Disclosure.** If either counsel wishes to disclose “Confidential” material  
20 to any person not identified in paragraphs B(2)(b) and B(2)(c) above; including, without limitation,  
21 a party that produced the “Confidential” material, or any third party who was the author or recipient  
22 of material produced in this litigation that is designated “Confidential,” he or she must proceed in  
23 the following manner: the names of the persons to whom “Confidential” material is to be disclosed  
24 shall be provided in writing to lead counsel for the Producing Party, along with the basis for his or  
25 her need to know, and a description with reasonable specificity of the Confidential material to be  
26 disclosed. Counsel for the Producing Party shall have seven (7) days to object to such disclosure in  
27 writing. If no objection is made in that time, the request is deemed granted. If an objection to the  
28 disclosure is asserted by counsel to the Producing Party, the Party wishing to disclose the

1 confidentially-designated materials must apply for relief to the Court. Such material shall not be  
2 disclosed pending a decision by the Court on such motion. Prior to the disclosure of “Confidential”  
3 material to any such person, the person must agree to be bound by the terms of this Protective Order  
4 by signing the Certificate of Acknowledgment in the form of Exhibit A hereto. By such execution,  
5 the person represents that he or she understands the terms of this Protective Order and that he or she  
6 agrees to be bound by its terms. The person will be shown only such identified “Confidential”  
7 materials as are essential to enable him or her to render the assistance required and will not have the  
8 right to retain copies or originals of the Documents reviewed.

9       **10. Filing Confidential Material.** Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
11 in the public record in this action any “Confidential” material. A Party that seeks to file under seal  
12 any “Confidential” material must comply with Local Rule 141. “Confidential” material may only  
13 be filed under seal pursuant to a court order authorizing the sealing of the specific “Confidential”  
14 material at issue. Pursuant to Local Rule 141, a sealing order will issue only upon a request  
15 establishing that the “Confidential” material at issue is entitled to protection under applicable law.  
16 If a Receiving Party's request to file “Confidential” material under seal pursuant to Local Rule 141  
17 is denied by the Court, then the Receiving Party may file the information in the public record unless  
18 otherwise instructed by the court.

19       **11. Inadvertent Production of Confidential Documents or Information.** The  
20 inadvertent production or disclosure of any Confidential Document or Confidential Information  
21 shall not, in itself, constitute a waiver or impairment of any claim of confidentiality, privilege or  
22 other protection from discovery. All Parties, however, reserve all rights to challenge the confidential  
23 status of such inadvertent production or disclosure. Upon learning that information protected from  
24 discovery has been inadvertently produced or disclosed, the non-Producing Party who received such  
25 information shall make good faith and reasonable efforts to reclaim any such Document and copies  
26 thereof that may have been provided to any third party and/or to prevent further disclosures or  
27 dissemination of such information.

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**Order**

Pursuant to the parties' stipulation, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

1. Requests to seal documents shall be made by motion before the same judge who will decide the matter related to that request to seal.

2. The designation of documents (including transcripts of testimony) as confidential pursuant to this order does not automatically entitle the parties to file such a document with the court under seal. Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or other authority for sealing, the requested duration, the identity, by name or category, of persons to be permitted access to the document, and all relevant information." L.R. 141(b).

3. A request to seal material must normally meet the high threshold of showing that "compelling reasons" support secrecy; however, where the material is, at most, "tangentially related" to the merits of a case, the request to seal may be granted on a showing of "good cause." Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of certain documents, at any court hearing or trial – such determinations will only be made by the court at the hearing or trial, or upon an appropriate motion.

5. With respect to motions regarding any disputes concerning this protective order which the parties cannot informally resolve, the parties shall follow the procedures outlined in Local Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an ex parte basis or on shortened time.

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1           6. The parties may not modify the terms of this Protective Order without the court's approval.  
2 If the parties agree to a potential modification, they shall submit a stipulation and proposed order  
3 for the court's consideration.

4           7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of  
5 the terms of this Protective Order after the action is terminated.

6           8. Any provision in the parties' stipulation that is in conflict with anything in this order is  
7 hereby DISAPPROVED.

8 DATED: April 12, 2021

/s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

**DECLARATION AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare that I have read, in its entirety, and  
understand the Stipulated Protective Order that was issued by the U.S. District Court for the Eastern  
District of California on \_\_\_\_\_ [date] in the case of Ryan Smith v. Superior Farms,  
Case No. 2:20-cv-01778-KJM-DB. I agree to comply with and to be bound by all of the terms of  
this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose, in any manner, any information or item that is subject to this Stipulated Protective  
Order to any person or entity, except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Eastern District  
of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_